

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 09-01880

PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND PINE, JJ.

IN THE MATTER OF ERIC C., PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NEW YORK STATE POLICE, RESPONDENT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (RAJIT S. DOSANJH OF COUNSEL), FOR RESPONDENT-APPELLANT.

DADD, NELSON & WILKINSON, ATTICA (JAMES M. WUJCIK OF COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Joseph D. Mintz, J.), entered December 1, 2008. The order, among other things, granted the amended petition seeking expungement of certain records.

It is hereby ORDERED that the order so appealed from is unanimously modified on the law by vacating the directive in the first ordering paragraph that the records in question be expunged and directing that the records be sealed and by vacating the second and third ordering paragraphs and as modified the order is affirmed without costs.

Memorandum: Supreme Court erred in granting the amended petition seeking expungement of all records generated or possessed by respondent in connection with its 2008 investigation of petitioner pursuant to Family Court Act § 375.3. That section provides that "[n]othing contained in . . . article [3 of the Family Court Act] shall preclude the court's use of its inherent power to order the expungement of court records" (emphasis added). Thus, that section does not provide the court with the authority to direct expungement of respondent's records with respect to the subject investigation. Moreover, even assuming, arguendo, that section 375.3 permitted expungement of those records, we conclude that the court abused its discretion in ordering expungement because the investigation was not terminated for reasons consistent with complete innocence (see *Matter of Dorothy D.*, 49 NY2d 212, 216; cf. *Matter of Anthony P.*, 65 AD2d 294, *affd* 49 NY2d 1022). Nevertheless, respondent correctly concedes that the subject records may be sealed. We therefore grant the alternative relief sought in the amended petition, i.e., the sealing of those records (see § 375.1 [1], [2] [h]), and we modify the order

accordingly.

Entered: April 30, 2010

Patricia L. Morgan
Clerk of the Court